IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.Rev.Pet.No. 423 of 2000()

CC.309/1996 of SESSIONS COURT, THRISSUR
CRA.273/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM
.....

REVN. PETITIONER: APPELLANT/ACCUSED

HARIDASAN, S/O.RAJAN, KUNDIL HOUSE,
P.O.MEZHATHUR,
PALAKKAD DISTRICT.

BY ADV. SRI.B.RAMAN PILLAI
SRI.S.VIJAYAKUMAR
SRI.RAJU RADHAKRISHNAN

RESPONDENTS: RESPONDENTSSS/ COMPLAINANT AND STATE
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1. **K.V.MAHEENDRAKUMAR,**
S/O.VELAYUDHAN,
KUNNATHULLI HOUSE, EDAKKALATHUR P.O.,
THRISSUR DISTRICT.

2. **STATE OF KERALA, REP.BY**
PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY ADV. SRI.V.GIRI – R1
SRI.P.R.VENKETESH
PUBLIC PROSECUTOR SRI.K.R.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.423/2000

ORDER O CRL.MP.2452/2000 IN CRL.RP. 423/2000

DISMISSED

30.07.2007 **SD/- J.B.KOSHY, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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J.B.KOSHY, J.

Crl.R.P.No.423 OF 2000

Dated 30th July, 2007

ORDER

A complaint was filed by the first respondent before the Magistrate's Court under Section 138 of the Negotiable Instruments Act complaining that the cheque issued by the revision petitioner for Rs.5,00,000/= was dishonoured for insufficiency of funds. Complaint was filed after completing the legal formalities. Apart from the complainant, Bank Manager was also examined to prove that the cheque was dishonoured for insufficiency of funds. Even though it was contended that amount was borrowed in 1991 and a blank cheque was issued and in 1993 the cheque was misused, no defence witness was examined to prove the same and presumption under Section 139 of the Negotiable Instruments Act was not rebutted by the petitioner. Therefore, the trial court found him guilty under Section 138 of the Negotiable Instruments Act and imposed a sentence of simple imprisonment for three months and Rs.5,00,000/= as compensation under Section 357 Cr.P.C. In appeal, the sentence was reduced as follows:

> "In supersession of the sentence imposed by the learned Magistrate u/s 138 of the

> N.I. Act, he is sentenced to undergo S.I. for one month.
>
> The appellant is further directed u/s.357(3) Cr.P.C. to pay an amount of Rs.5,05,000/- as compensation and in default of payment to undergo S.I. for a period of three months. Out of the amount, if realised Rs.5,00,000/- shall be paid to the complainant as compensation and Rs.5,000/= shall be credited to the state for the loss suffered by it in terms of judicial time and resources spent by it for the resolution of the controversy between the parties."

Considering the execution of the cheque by the petitioner, dishonour of the same for insufficiency of funds and compliance of formalities for filing Section 138 of the N.I. Act, I am of the opinion that no grounds are made out by the revision petitioner to interfere with the conviction passed by the courts below concurrently in the revisional jurisdiction. The revision petitioner has failed to rebut the presumption under Section 139 of the N.I. Act also after admitting the signature in the cheque. However, considering the facts and circumstances of the case, even though I am not interfering with the compensation ordered by the courts below, I am reducing the sentence of imprisonment from one month to three days. Other parts of

sentence are not interefered.

The revision petition is disposed of accordingly. This order is certified to the trial court for due execution.

J.B.KOSHY
Judge

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